

## REMARKS

This application has been reviewed in light of the Office Action dated April 20, 2004. Claims 1, 4-7, 10, 13-15 and 30-39 are presented for examination, of which Claims 1 and 18 are in independent form. Claims 1, 5, 7, 13-15, 18, 31, 32 and 35-37 have been amended to define still more clearly what Applicant regards as his invention. The changes made are solely for the purpose of clarification of the claim language, and are neither intended nor believed to narrow the scope of any claim recitation. Favorable reconsideration is requested.

Claims 1, 4, 5, 10, 18, 30, 31, 34, 38 and 39 were rejected under 35 U.S.C. § 103(a) as being obvious from U.S. Patent 5,504,757 (Cook et al.) in view of European Patent Application 0697778 (Keshav et al.). In addition, Claims 6 and 32 were rejected under section 103(a) as being obvious from *Keshav* in view of U.S. Patent 4,884,266 (Pflaumer), Claims 7 and 33, as being obvious from *Cook* in view of U.S. Patent 5,010,553 (Sheller et al.), Claims 13, 14, 35 and 36, as being obvious from *Cook* in view of *Keshav* and U.S. Patent 6,167,046 (Terada et al.), and Claims 15 and 37, obvious from *Cook* in view of U.S. Patent 6,246,665 (Watanabe et al.).

Independent Claim 1 is directed to a communication apparatus that comprises a communication unit having different transfer rates and adapted to transmit a predetermined packet to all destination apparatuses using at least one of the different transfer rates. The apparatus also has a control unit adapted to determine one of the different transfer rates as a

maximum transfer rate between the communication apparatus and all of the destination apparatuses after responses to the predetermined packet are received from all of the destination apparatuses.

Thus, among other important features of an apparatus according to Claim 1, is that the apparatus has two or more different transfer rates, transmits a predetermined packet to all destination apparatuses using at least one of those transfer rates, and determines one of those transfer rates as a maximum transfer rate between the communication apparatus and all of the destination apparatuses after responses to the predetermined packet are received from all of the destination apparatuses.

Initially, as is conceded in the Office Action, *Cook* does not disclose a communication apparatus that receives responses from all destination apparatuses. *Keshav* relates to a network that includes one source apparatus and one destination apparatus (see, for example, col. 1, lines 12 and 13, referred to by the Examiner). Nothing has been found or pointed out in *Keshav* that relates to a system having more than one destination, and therefore certainly cannot teach or suggest determining a maximum transfer rate after responses to a transmitted predetermined packet are received from all of plural destination apparatuses.

Thus, even if *Cook* and *Keshav* are combined in the fashion proposed in the Office Action (and assuming for argument's sake that such combination would be permissible),

the result of the combination would not meet the terms of Claim 1, which is therefore deemed to be clearly allowable over those two documents.

Independent Claim 18 is a method claim corresponding to apparatus Claim 1, and is believed to be allowable at least by virtue of the arguments presented above with regard to Claim 1.

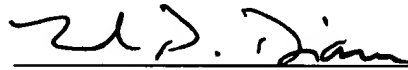
A review of the other art of record has failed to reveal anything which, in Applicants' opinion, would remedy the deficiencies of the art discussed above, as references against the independent claims herein. Those claims are therefore believed patentable over the art of record.

The other claims in this application depend from one or another of the independent claims discussed above and, therefore, are submitted to be patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, individual reconsideration of the patentability of each claim on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Applicants' undersigned attorney may be reached in our New York Office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address listed below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L.P. Diana", written over a horizontal line.

Leonard P. Diana  
Attorney for Applicants  
Registration No. 29,296

FITZPATRICK, CELLA, HARPER & SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-3801  
Facsimile: (212) 218-2200

NY\_MAIN 424785v1